

July 11, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Heating Oil Partners, L.P.

Date of Filing: April 12, 2006

Case No.: TEE-0035

On April 12, 2006, Heating Oil Partners, L.P. (Heating Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, the firm requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Report." As explained below, we have determined the Heating Oil request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B and EIA-821 reporting requirements grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA permits reporting firms to rely on reasonable estimates.³

Form EIA-821 is a yearly report, pursuant to which fuel oil distributors report sales volumes of fuel oil and kerosene. Survey results are published in the EIA "Fuel Oil and Kerosene Sales" report and in the "State Energy Data Report." These materials are available to the general public as well as to the petroleum industry. The data are also used by the DOE and other government agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Again, in order to minimize the reporting burden, the EIA permits the reporting firms to rely on reasonable estimates.⁴

EIA designates some companies as "certainty" firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.

All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers the data more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair

² See H.R. Rep. NO. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

³ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁴ See Section 7 of the General Instructions to Form EIA-782B.

distribution of burdens."⁵ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;⁶ the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;⁷ extreme or unusual circumstances disrupt a firm's activities;⁸ a combination of factors render the reporting requirement an undue burden.⁹

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.¹⁰ Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.¹¹

Certainty firms are of great importance to the accuracy of the data samples because of the size and extent of their

⁵ 42 U.S.C. § 7194(a); see also 10 C.F.R. § 1003.25(b)(2).

⁶ *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

⁷ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

⁸ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

⁹ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

¹⁰ *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

¹¹ *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).

operations.¹² Accordingly, in order for a certainty firm to receive an exception, the firm must make a compelling showing that the filing requirement imposes a "special hardship, inequity, or unfair distribution of burdens."

III. The Heating Oil Application for Exception

Heating Oil filed its exception application in April 2006.¹³ Based upon a review of the Heating Oil application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Heating Oil to give the firm an opportunity to discuss the request.¹⁴ In a June 14, 2006 letter, Heating Oil supplemented its application.¹⁵

Heating Oil is a privately-owned seller of petroleum products headquartered in Darien, Connecticut. Heating Oil has filed Form EIA-782B each month since 1997.¹⁶ The firm has also filed Form EIA-821 on an annual basis since 1995.¹⁷ According to Heating Oil, these reporting requirements together present an undue burden.¹⁸ Heating Oil states that the firm entered Chapter 11 reorganization in September 2005.¹⁹ The firm states that its administrative staff has lost vital personnel due to the reorganization, and that in turn has doubled the workload for the remaining staff. The firm also states that since the reorganization, it has been audited by five states, and more audits are expected. These, too, tax its operations. Finally, the firm indicates that its volume of fuel oil sales is "very large" and that it does business in nine states.²⁰

In the course of considering the Heating Oil Application, we also contacted a representative from the Energy Information Administration (EIA). EIA stated that Heating Oil is a

¹² Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on April 24, 2006.

¹³ *Id.*

¹⁴ Letter from Ronald Hester, OHA to Neal Kelley, Heating Oil Partners, L.P., dated May 31, 2006.

¹⁵ Letter from Neal Kelley, Heating Oil Partners, L.P., to Ronald Hester, OHA, dated June 14, 2006.

¹⁶ Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on April 24, 2006.

¹⁷ Conversation between Ronald D. Hester, OHA and Daniel Walzer, EIA on April 24, 2006.

¹⁸ Heating Oil Partners, L.P., Application for Exception, submitted to OHA on April 12, 2006.

¹⁹ *Id.*

²⁰ *Id.*

"certainty firm".²¹ As explained above, certainty firms are of great importance because of the size and extent of their operations.

IV. Analysis

Our independent research indicates that, indeed, the firm's sales volume is so large that it is one of the largest residential heating oil distributors in the United States, employing approximately 1,000 people with operations in the New England and mid-Atlantic area. During its fiscal year ending June 30, 2005, the firm delivered 236 million gallons of heating oil and other refined petroleum products to its 137,000 residential, fleet, and commercial customers. The firm has stated that it will emerge a "healthy company with a strong platform for future growth" and will have "one of the strongest balance sheets in the industry."²²

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.²³ The burden of this requirement can be substantially reduced by the use of estimates.²⁴

Given the firm's size and location, the firm's data is important to the EIA. The firm is one of the largest heating oil suppliers in the industry and operates in the Northeastern United States, an area that, historically, is heavily dependent upon heating oil. Thus there is a strong interest in EIA having the benefit of the company's data.

More importantly, the firm's argument -- that it is now in Chapter 11 reorganization and has lost vital personnel -- does not provide the basis for an exception at this time. A June 14, 2006 Heating Oil press release states that the firm expects to emerge from bankruptcy in July 2006 a "healthy company with a strong platform for future growth" with "one of the strongest balance sheets in the industry."²⁵ In view of the firm's size and optimistic current financial outlook, we cannot conclude

²¹ Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on April 24, 2006.

²² Heating Oil Partners, L.P., Press Release dated June 14, 2006.

²³ See Section 10 of General Instructions to Form EIA- 782B.

²⁴ See Section 7 of the General Instructions to Form EIA-782B.

²⁵ See note 22 *supra*.

that the Form EIA-782B and Form EIA-821 reporting requirements cause a special hardship or impose a burden on the firm that is disproportionate to the burden that the reporting requirements impose upon similarly situated firms.

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Heating Oil Partners, L.P., Case No. TEE-0035, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 11, 2006